



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 13.02.2015
CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WEB COPY

Criminal Original Petition(MD)No.2193 of 2015
and
M.P(MD)No.1 of 2015

1) Shanmugam
2) Ganesan
3) Jothi

... Petitioners

Vs.

State rep. by
The Inspector of Police,
Mudhukulathur Police Station,
Ramanathapuram District,
in Cr.No.148/03.

... Respondents

Petition filed under Section 482 of the Criminal Procedure Code, to set aside the order passed in Unnumbered Cr.M.P.No.____/14 dated 22.08.2014 in C.C.No.24/04 on the file of the learned Judicial Magistrate, Mudhukulathur and allow the petition directing the petitioners/accused to pay the cost amount within the time limit as fixed by this Hon'ble Court.

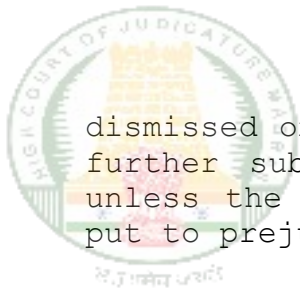
For Petitioners	: Mr.R.Venkateswaran
For Respondent	: Mrs.S.Prabha
	Government Advocate (Crl.Side)

O R D E R

The petitioners are arrayed as accused 1 to 3 in C.C.No.24/04 on the file of the learned Judicial Magistrate, Mudhukulathur.

2.The case of the prosecution is that in C.C.No.24/04 pending on the file of the learned Judicial Magistrate, Mudhukulathur, for the alleged commission of offences under Sections 341, 324, 326, 323 and 506(ii) IPC, the petitioners/accused had filed a petition to recall PW8, a Doctor who initially treated the victim and PW10 who subsequently treated the victim and it was ordered subject to the payment of Rs.500/- payable to Mudhukulathur Taluk Legal Services Committee on or before 21.08.2014 with the default clause. However, the said conditional order has not been complied with and therefore, the petitioners filed Cr.M.P. When the matter was called on 22.08.2014, the lower court taking into consideration of the fact that cost was not paid, has dismissed the petition and aggrieved by the same, the present Criminal Original Petition has been filed.

3.Learned counsel for the petitioners/accused 1 to 3 would submit that when the matter was called on 22.08.2014, a memo was filed explaining the reasons as to the non compliance of the order and it was taken on file and on the very same day itself, the petition came to be



dismissed on account of non compliance of the conditional order and would further submit that the petitioners are willing to pay more cost and unless the said witnesses are recalled and examined, the defence may be put to prejudice and hence prays for appropriate order.

4.Per contra, Mrs.S.Prabha, learned Government Advocate (Crl.Side) would submit that though indulgence was shown to the petitioners/accused by the trial court, they have not utilised the same nor they have also assigned any reason as to the non compliance of the order and therefore, the trial court has rightly dismissed the petition.

5.This Court considered the rival submissions and also perused the impugned order.

6.The trial court vide order dated 05.08.2014 has allowed the application filed by the petitioners/accused 1 to 3 for recall of PW8 and PW10 subject to certain conditions and admittedly, it was not complied with and therefore, the petition was rightly dismissed on 22.08.2014. However, taking note of the submission made by the learned counsel for the petitioners/accused 1 to 3 that the petitioners are willing to pay further cost and they will not delay or protract the trial, this Court is of the view that in order to meet the ends of justice and also to give one more opportunity to the petitioners/accused to substantiate their defence, the following order may be passed.

7.Accordingly, each of the petitioners shall pay a sum of Rs.500/- to Mudhukulathur Taluk Legal Services Committee on or before 18.02.2015, failing which, the petition seeking recall of witnesses would stand automatically dismissed. In the event of the compliance of the order, the trial court is directed to recall PW8 and PW10 and on appearance of the witnesses, the petitioners shall complete the cross-examination without any loss of time and would also extend their full co-operation for early completion of the trial and pronouncement of the verdict.

The Criminal Original Petitions stands disposed of accordingly. Consequently, M.P(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar(CO)

\\True copy\\

Sub Assistant Registrar

To

1)Judicial Magistrate, Mudhukulathur.

2)The Inspector of Police, Mudhukulathur Police Station,
Ramanathapuram District.

3)Additional Public Prosecutor, Madurai Bench of Madras High Court,
Madurai.

+1 CC TO M/S.R.VENKATESWARAN, ADVOCATE SR.NO.6980

Crl.O.P(MD)No.2193 of 2015 and

M.P(MD)No.1 of 2015

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